

JUL - 9 1999

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

v.

QUINCY DEANDRE KELLY,

Defendant.

No. CIV-99-0558 HB/LCS
CR-97-497 HB


ROBERT M. MARCH
CLERK

MEMORANDUM OPINION AND ORDER

This matter is before the Court sua sponte to consider Defendant's failure to respond to the Court's order of May 28, 1999, requiring Defendant to cure filing deficiencies in his pro se motion for post-conviction relief pursuant to 28 U.S.C. § 2255 filed May 13, 1999. The § 2255 motion is also under consideration pursuant to Rule 4(b) Governing Section 2255 Proceedings.

In addition to Defendant's failure to respond to the May 28 order, filing of the pro se motion is prohibited by D.N.M.LR-Cr 57.2(a) (incorporating former D.N.M.LR-Civ 83.7, now 83.5) because Defendant is represented by counsel in this criminal proceeding. Furthermore, the file indicates that on September 22, 1998, Defendant filed a notice of appeal, and no order terminating the appeal appears of record. "Absent extraordinary circumstances, the orderly administration of criminal justice precludes a district court from considering a § 2255 motion while review of the direct appeal is still pending." *United States v. Cook*, 997 F.2d 1312, 1319 (10th Cir. 1993). No such extraordinary circumstances appear in the motion, and Defendant is not entitled to relief. Rule 4(b). The motion will be dismissed.

IT IS THEREFORE ORDERED that Defendant's motion for post-conviction relief pursuant 28 U.S.C. § 2255 filed May 13, 1999, is DISMISSED without prejudice, and this civil proceeding is DISMISSED.


UNITED STATES DISTRICT JUDGE

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